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9 **BEFORE THE**  
**RESPIRATORY CARE BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. S-389

13 GERALD EDWIN JOHNSON  
3920 Roxanne Avenue, Apt. #15  
14 Los Angeles, California 90008

**STATEMENT OF ISSUES**

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely  
20 in her official capacity as the Executive Officer of the Respiratory Care Board of California  
21 (Board), Department of Consumer Affairs.

22 2. On or about June 1, 2006, the Board received an application for a  
23 Respiratory Care Practitioner License from Gerald Edwin Johnson (Respondent). On or  
24 about May 26, 2006, Respondent certified under penalty of perjury to the truthfulness of all  
25 statements, answers, and representations in the application. The Board denied the application  
26 on June 6, 2007.

27 JURISDICTION

28 3. This Statement of Issues is brought before the Board under the

1 authority of the following laws. All section references are to the Business and Professions  
2 Code (Code), unless otherwise indicated.

3 4. Section 3710 of the Code states: “The Respiratory Care Board of  
4 California, hereafter referred to as the board, shall enforce and administer this chapter  
5 [Chapter 8.3, the Respiratory Care Practice Act].”

6 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,  
7 and revoke licenses to practice respiratory care as provided in this chapter.”

8 6. Section 3732, subdivision (b) of the Code states:

9 "The board may deny an application, or may order the issuance of a license  
10 with terms and conditions, for any of the causes specified in this chapter for  
11 suspension or revocation of a license, including, but not limited to, those causes  
12 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

13 7. Section 3750 of the Code states:

14 “The board may order the denial, suspension or revocation of, or the  
15 imposition of probationary conditions upon, a license issued under this chapter, for  
16 any of the following causes:

17 “ . . .

18 “(d) Conviction of a crime that substantially relates to the qualifications,  
19 functions, or duties of a respiratory care practitioner. The record of conviction or a  
20 certified copy thereof shall be conclusive evidence of the conviction.

21 “ . . .

22 “(j) The commission of any fraudulent, dishonest, or corrupt act which is  
23 substantially related to the qualifications, functions, or duties of a respiratory care  
24 practitioner.

25 “ . . . ”

26 8. Section 3752 of the Code states:

27 “A plea or verdict of guilty or a conviction following a plea of nolo contendere  
28 made to a charge of any offense which substantially relates to the qualifications,

1 functions, or duties of a respiratory care practitioner is deemed to be a conviction  
2 within the meaning of this article. The board shall order the license suspended or  
3 revoked, or may decline to issue a license, when the time for appeal has elapsed, or  
4 the judgment of conviction has been affirmed on appeal or when an order granting  
5 probation is made suspending the imposition of sentence, irrespective of a subsequent  
6 order under Section 1203.4 of the Penal Code allowing the person to withdraw his or  
7 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty,  
8 or dismissing the accusation, information, or indictment.”

9 9. California Code of Regulations, Title 16, section 1399.370, states:

10 “For the purposes of denial, suspension, or revocation of a license, a crime or  
11 act shall be considered to be substantially related to the qualifications, functions or  
12 duties of a respiratory care practitioner, if it evidences present or potential unfitness of  
13 a licensee to perform the functions authorized by his or her license or in a manner  
14 inconsistent with the public health, safety, or welfare. Such crimes or acts shall  
15 include but not be limited to those involving the following:

16 “ . . .

17 “(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

18 “(c) Conviction of a crime involving driving under the influence or reckless  
19 driving while under the influence.

20 “. . . .”

#### 21 COST RECOVERY

22 10. Section 3753.5, subdivision (a) of the Code states:

23 "In any order issued in resolution of a disciplinary proceeding before the  
24 board, the board or the administrative law judge may direct any practitioner or  
25 applicant found to have committed a violation or violations of law to pay to the board  
26 a sum not to exceed the costs of the investigation and prosecution of the case."

27  
28 11. Section 3753.7 of the Code states:

1           "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
2 include attorney general or other prosecuting attorney fees, expert witness fees, and  
3 other administrative, filing, and service fees."

4           12.     Section 3753.1, subdivision (a) of the Code states:

5           "An administrative disciplinary decision imposing terms of probation may  
6 include, among other things, a requirement that the licensee-probationer pay the  
7 monetary costs associated with monitoring the probation."

8                           FIRST CAUSE FOR DENIAL OF APPLICATION

9   (Conviction of a Crime)

10           13.     Respondent's application is subject to denial under Code sections  
11 3750, subdivision (d), and 3752, and California Code of Regulations, Title 16, section  
12 1399.370, subdivisions (b) and (c), in conjunction with Code section 3732, subdivision (b), in  
13 that Respondent has been convicted of crimes substantially related to the qualifications,  
14 functions and duties of a respiratory care practitioner. The circumstances are as follows:

15   March 31, 1999 Conviction

16           A.     On or about March 4, 1999, in Los Angeles County Superior Court  
17 Information No. TA052865, Respondent was charged with possession of a controlled  
18 substance, in violation of Health and Safety Code section 11350, subdivision (a), a  
19 felony (Count 1), use of a controlled substance, in violation of Health and Safety  
20 Code section 11550, subdivision (a), a misdemeanor (Count 2), and possession of  
21 drug paraphernalia, in violation of Health and Safety Code section 11364, a  
22 misdemeanor (Count 3), following his arrest on January 29, 1999.

23           B.     On or about March 31, 1999, pursuant to a negotiated plea agreement,  
24 Respondent was convicted upon his plea of nolo contendere to possession of a  
25 controlled substance (Count 1). Probation was denied, and Respondent was ordered  
26 to serve sixteen months in state prison (with credit for 93 days) and pay a restitution  
27 fine of \$200.00, which was stayed. Pursuant to the negotiated plea agreement, Counts  
28 2 and 3 of the information were dismissed.

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1 and he signed for the purchase. The loss prevention clerk called the credit card  
2 company and determined that the credit card was stolen. Respondent admitted that he  
3 used the credit card. The loss prevention clerk found in Respondent's possession two  
4 additional receipts for purchases at Robinson's-May which totaled \$583.28.  
5 Respondent was arrested for theft and transported to the Lakewood Sheriff's Station.  
6 Receipts with the same stolen credit card number were found in Respondent's pocket  
7 for purchases in the amount of \$857.84 from Robinson's-May and in the amount of  
8 \$251.55 from the Disney store. The deputy sheriff also found in Respondent's  
9 possession two receipts with the same credit card number and the name of the true  
10 credit card holder.

11 G. On or about March 12, 1997, in Los Angeles County Superior Court  
12 Information No. VA041449, Respondent was charged with grand theft of a credit  
13 card, in violation of Penal Code section 484e, subdivision (e), a felony (Count 1), and  
14 burglary, in violation of Penal Code section 459, a felony (Count 2).

15 H. On or about April 21, 1997, Respondent was convicted pursuant to a  
16 plea of guilty to grand theft of a credit card (Count 1). Probation was denied, and  
17 Respondent was sentenced to 16 months in state prison (with credit for 58 days). He  
18 was ordered to pay a restitution fine in the amount of \$200.00. Count 2 of the  
19 information was dismissed.

20 February 14, 1995 Conviction

21 I. On or about February 7, 1995, Respondent was arrested for theft at a  
22 Mervyn's Department store and was issued a Notice to Appear.

23 J. On or about February 14, 1995, in Alameda County Municipal Court  
24 Case No. 161354, pursuant to a negotiated plea agreement, Respondent was convicted  
25 upon his plea of nolo contendere to theft, in violation of Penal Code section 484,  
26 subdivision (a). Proceedings were suspended, and Respondent was placed on  
27 probation for two years on the following terms and conditions, among others: serve 1  
28 day in county jail (with credit for 1 day), pay a victim restitution fine in the amount of

1           \$100.00 and complete 96 hours of community service.

2                           SECOND CAUSE FOR DENIAL OF APPLICATION

3                           (Commission of a Fraudulent, Dishonest, or Corrupt Act)

4                           14.     Respondent's application is subject to denial under Code section 3750,  
5 subdivision (j), in conjunction with section 3732, subdivision (b), in that he committed  
6 fraudulent, dishonest or corrupt acts that are substantially related to the qualifications,  
7 functions, or duties of a respiratory care practitioner. Respondent had a conviction for theft  
8 of a credit card on April 21, 1997, and a conviction for theft on February 14, 1995. The facts  
9 and circumstances, set forth in above Paragraph 13, subparagraphs F through H and I through  
10 J, of this Statement of Issues are incorporated herein by reference.

11   PRAYER

12                           WHEREFORE, Complainant requests that a hearing be held on the matters  
13 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 14                           1.     Denying the application of Gerald Edwin Johnson for a Respiratory  
15 Care Practitioner License;
- 16                           2.     Directing Gerald Edwin Johnson to pay the Respiratory Care Board the  
17 costs of the investigation and enforcement of this case, and if placed on probation, the costs  
18 of probation monitoring; and
- 19                           3.     Taking such other and further action as deemed necessary and proper.

20                           DATED: October 11, 2007

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22  
23   Original signed by Liane Zimmerman for:  
24   STEPHANIE NUNEZ  
25   Executive Officer  
26   Respiratory Care Board of California  
27   Department of Consumer Affairs  
28   State of California  
   Complainant